IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7375 OF 2005

1. Sayedsaheb Hayatchand Sayyad
2. Gousmohiddin K. Pirjade Applicants

versus

State of Maharashtra Respondents

Mr.R.V.More for applicants.

Mr.K.V.Saste, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st November 2005

PC :

1. Heard Mr.More for the applicants and Mr.Saste appearing for the respondents.

2. This matter was mentioned by Mr.More on 14th November 2005. At the request of learned APP it was adjourned till today to enable him to take instructions.

3. Today, this matter was listed and Mr.Saste prays for time to take instructions. He states that the Inquiry Officer is also not present.

4. In my view, the time which was already granted was sufficient to take instructions. Hence adjournment refused.

5. This is a case where the applicants have been charged with offences punishable under sections 420, 423, 467, 474 read with 34 of IPC.. It is the case of the prosecution that the brother of one Shankar Nikam had filed a complaint. The Judicial Magistrate, First Class, Miraj directed the Police to investigate. There is an apprehension that the applicants might be arrested. According to the applicants, the private complaint filed by Dattatraya being Criminal Case No.250/2005 does not disclose even prima facie commission of any offence. The entire dispute is civil in nature. According to the applicants, they had no privity of contract with the complainant Dattatraya. On the other hand, Shankar had agreed to mortgage the property bearing City Survey No.6747, which is a shop premises, in favour of applicant no.1. He delivered physical possession of the shop premises and the applicants commenced their Cycle Shop Business therefrom. Although, the applicants were entitled to have a Mortgage Deed in their favour, the said Shankar did not take

steps to execute the same. Accordingly, the applicants filed a Civil Suit against Shankar in the Court of Civil Judge, Junior Division being RCS No.245 of 2005 and applied for temporary injunction. The learned Judge, after perusing the plaint averments, was pleased to grant an ad-interim order in favour of the applicants herein. The said suit is pending.

6. Now, Shankar has not come forward with any grievance that the property is not mortgaged or that his signatures have been obtained by force, under duress or by coersion. The said Dattatraya, who is real brother of Shankar, has come forward with a grievance that his brother has not executed any such mortgage deed but his signatures were obtained on some documents.

7. Considering the fact that the dispute is about interest created in immovable property and that the case of the applicants being specific that they have no privity of contract with the complainant, this is a fit case for grant of anticipatory bail. It is the case of the applicants that they are permanent residents of Miraj and they have a licence in their favour to carry on the Cycle Shop business from the

premises in question. They have no criminal antecedents. They have agreed to obey such condition/s which may be imposed by this Court and co-operate the investigation.

8. Accordingly following order :-

(i) In the event of the arrest of the applicant in connection with Criminal Case No.250 of 2005 filed at Judicial Magistrate, First Class, Miraj, the applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.5,000/- (Rs.Five thousand only) each with one or two sureties in the like amount;

(ii) The bail is granted subject to condition that the applicant will attend the concerned Police Station on every Thursday between 10.00 a.m. to 12’ noon till charge sheet is filed;

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The

applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the applicants only till charge sheet is filed. Thereafter, they will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in the above terms.

(S.C.DHARMADHIKARI, J.)